

— GATS —

IN WHOSE SERVICE?

The MAI was only a rehearsal for what the transnational corporations have in mind under the GATS, which is why individuals, communities and nations must stand up for their rights.

by Ruth Caplan © 2001

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THE SPECTRE OF GLOBAL FREE TRADE IN SERVICES

The General Agreement on Trade in Services (GATS) at the World Trade Organization (WTO) is seen as the next MAI (Multilateral Agreement on Investment). It has a wider impact on a broad range of "services" than many (undemocratic) international trade and investment agreements. Strong business lobby groups have helped make the US and European Union (EU) push the GATS hard to developing countries.

If given the go-ahead, it will have "devastating effects on the ability of governments to meet the needs of the poorest and most powerless of their citizens", according to the World Development Movement's report, "In Whose Service?" The report goes on to show that there are concerns on a number of fronts, including the following:

1. GATS covers basic services like water, health and education. These are basic necessities, not things that can be left to the market. It should be the duty of governments to ensure that even the poorest have access to such services, whether or not they can afford to pay. Yet, water supply in developing countries appears to be a major target for European companies in the current negotiations.

2. GATS rules are not just limited to the cross-border trade in services. They also prevent some forms of government regulation of foreign investors, that is, of multinational companies setting up shop in their country. The GATS therefore extends beyond other trade agreements, preventing governments from following their own national development strategies and ensuring that local people actually benefit from the presence of multinational corporations.

3. Commitments made by governments under GATS are effectively irreversible. The privatisation and deregulation of service provision is highly controversial, yet governments are not only signing away their own right to regulate but the right of future generations to implement different policies.

Negotiations are scheduled to start in March 2001, with a view to having an agreement by the end of 2002.

(Source: <http://www.globalissues.org/TradeRelated/FreeTrade/GATS.asp>)

GATS HANDBOOK

What is GATS?

The General Agreement on Trade in Services (GATS) is one of 15 agreements adopted as part of the Uruguay Round of trade negotiations, concluded in 1994, which greatly expanded the 1947 General Agreement on Tariffs and Trade (GATT). The Uruguay Round also created the World Trade Organization to enforce the agreements. Today, 139 countries are in the WTO. Every country in the WTO is part of the GATS.

Services cover everything from McDonald's hamburger flippers to international bankers. Health care, education, legal, accountancy, advertising, media, travel, even municipal services like sewerage and water are all services which today make up about 70 per cent of the US economy.

The goal of bringing services into the WTO is to make sure they are "liberalised". This means promoting privatisation of public services like education. It also means deregulation of services at the local, state and national levels and subjecting them to the WTO's global rules for the benefit of transnational corporations (TNCs).

The US pushed very hard to have services included in the Uruguay Round negotiations, but did not succeed in requiring the inclusion of all services. Countries resisted the threat

to privatisation of their public services and would only agree to GATS if they could choose which services to include in the agreement. So GATS has country-specific schedules of commitments which detail which services are covered. Nonetheless, GATS creates legally enforceable obligations backed up by trade sanctions.

The WTO says that GATS is the first multilateral agreement to provide legally enforceable rights to trade in all services. It has built-in commitment to continuous liberalisation through periodic negotiations. And it is the world's first multinational agreement on investment, since it covers not just cross-boundary trade but every possible means of supplying a service, including the right to set up a commercial presence in the export market.

This sets out rights without responsibilities for corporations, including the right of US corporations to set up operations in other countries immune from US laws.

The "Built-in" Agenda

Now big changes are being proposed. GATS is part of the "built-in agenda". Negotiations are going forward, even though the "Millennium Round" of new WTO negotiations came to a screeching halt in Seattle in December 1999. This is because the original GATS requires negotiations to recommence at the beginning of 2000 in order to pursue "progressive liberalisation".

The service industry corporations see a real opportunity here. To quote J. Robert Vastine, President of the US Coalition of Service Industries, speaking in Tokyo on May 13, 1999: "The overarching objective of the global business community in the coming negotiations should be both to broaden and deepen countries' GATS liberalisation commitments. A contestable, competi-

tive market in every sector and in every WTO member country is the ultimate goal." The end result of this scenario would be government *of* the corporations, *for* the corporations and *by* the corporations. What public services remained would be forced into constant competition with the corporations, leading to slashing of labour costs and services to the poor.

How does GATS operate?

The trade ministers of WTO member countries meet in regular session and, when negotiating, in special session. Countries also appoint representatives to the Council on Trade in Services which meets more frequently to do the legwork for the ministers. The WTO provides staffing through its Secretariat located in Geneva. The US Trade Representative's office (USTR) is the lead US agency and also maintains staff in Geneva.

If a member country believes another member country has violated GATS and they cannot resolve their disagreement, the aggrieved country can bring its claim to the WTO's dispute settlement body, which has not been receptive to environmental,

health and other public concerns. This panel meets in closed session, acting like a secret tribunal. Decisions are enforced by the winning country imposing economic sanctions on the losing country until it comes into compliance.

How will GATS affect our lives?

Privatisation of services has impacts on how children are educated, how the elderly are cared for, how workers are treated, even how we obtain water to drink. GATS rules will accelerate a trend towards privatisation of human services which is already underway in the United States.

In a democracy, people should be able to decide what human services they want the government to provide. Under GATS, once a country agrees to put a service into its "schedule of specific commitments", it is very difficult to change course. A country has a three-year window in which to withdraw a commitment and must agree on "any necessary compensatory adjustment" for the withdrawal. Also, at the time the US makes a commitment, it can exempt existing state laws; but once the commitment is made, no states can pass similar laws without violating GATS.

• Education

Already, corporations have made major inroads into our educational system. High schools are contracting with private businesses for guidance counsellors; textbooks are using corporate logos in their exercises; Zap Me! is offering schools free computer equipment in return for displaying a constant stream of advertisements on the screens; and Coca-Cola has made a deal with Colorado Springs schools to provide US\$8.4 million in funding over 10 years in exchange for the schools' contracting to sell 70,000 cases of Coke products to students every year.

According to David Kearns, the US Chair of

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Xerox: "Business will have to set the agenda...a complete restructuring driven by competition and market discipline, unfamiliar grounds for educators."

When knowledge becomes privatised, it is no longer a common heritage to be used for the common good. Maude Barlow writes in *The Ecologist*: "The intellectual property provisions of NAFTA and GATT treat knowledge as a commodity and as the exclusive property of the company that takes a patent or holds a copyright on it." The inclusion of education under GATS would accelerate this process and make it harder for citizens to turn it around.

• Health Care

Agnes Bertrand, writing in *The Ecologist*, states "it is not health which makes money, but ill health". The WTO staff says countries should reconsider the "depth and breadth of their commitments" on health and social services, which are "trailing behind other sectors". This means more privatisation, deregulation and competition by foreign suppliers.

Privatisation of public health services increases inequity. The WTO acknowledges that "private health insurers competing for members may engage in some form of 'cream-skimming'...private clinics may well be able to attract qualified staff from public hospitals without...offering the same range of services to the same population groups..."

According to Public Services International (PSI): "The elite will be able to access private TNC-controlled care; the rest will have to make do with the shrinking public system." US-managed care corporations are doing just this in Latin America.

As mobility of health care professionals is encouraged, there will be pressure for a downward levelling of standards for medical training and qualification, resulting in a reduction in health quality standards. Further, health service providers may encourage rich foreign clients while ignoring poorer clients in their own area, as is already happening in northern Mexico. Finally, notes the PSI report, "privatisation brings with it a view of labour as a cost, rather than an investment in skills", leading to use of less skilled labour to replace more skilled labour performing the same tasks.

• Water

With water scarcity becoming widespread, partly due to the pollution and misuse of water by corporations, companies like Bechtel and Enron want to profit from this scarcity by supplying water in bulk to those who can afford it. While water itself is a commodity, the operation of water pipelines and ships to supply bulk water is a service.

The local distribution of drinking water is also a service. In the US, this is primarily a municipal function. But today, TNCs want to privatise these systems, as has already been done in countries such as France and Great Britain.

Rebecca Mark, speaking as CEO of Enron's water subsidiary Azurix, said she will not rest until all the world's water has been

privatised. Contrast this with the words of Vandana Shiva: "Privatisation and commodification of water are a threat to the right to life."

The threat is at our doorstep. In California, the state Constitution guarantees that the people have the right of ownership of the water; but tragically, the people are losing control of this right to agribusiness, private land companies and water speculators like Azurix. Since 1992, some companies operating as federal contractors have been given the right to sell some of California's water on the open market. In 1995, the state also gave its contractors the right to sell water.

The European GATS negotiators want to be sure that drinking-water is included in the GATS agreement because they have large TNCs like Suez Lyonnaise des Eaux and Générale des Eaux, a division of Vivendi SA, which are involved in privatising municipal water services around the world, including in the city of Indianapolis.

Now the US negotiators are figuring out how to respond. They know there is controversy in the US about having GATS cover water. US corporations would like limited coverage in areas where they are competitive with the European corporations. Advocates for environment and justice don't want water covered in GATS at all. The US is looking for a compromise position, and its negotiators are willing to propose that GATS "carve out", i.e., exclude, transportation of bulk water across international borders by private companies. This would be good from the perspective of citizens and organisations who believe water is a *right*, not a need to be supplied by the market for profit.

But the US is considering a more compromised position on water services such as water treatment, distribution and sewage treatment within a country. It has suggested limiting the application of GATS in the US to commercial applications. Unfortunately, this approach does not deal with the

fact that other countries might have a harder time resisting the pressure from TNCs to put public water systems on their schedule of commitments. If a country does this and later realises it made a mistake, it could be too late to change course.

Encouraging the private sector to supply water for commercial uses could lead to less water being available for purposes like public drinking water and wildlife protection. Also, if big commercial users get water from private sources, public water supplies will have to carry more of the public infrastructure costs, leading to higher rates. This is another form of cream-skimming.

Finally, GATS fits in nicely with the IMF and World Bank agenda to promote privatisation. In Bolivia, under pressure from these institutions, the government passed a law which led to the privatisation of water in its major city of Cochabamba. The city signed a contract with a private consortium in which Bechtel had a majority interest. Water bills quickly became unaffordable. Cooperative distribution systems were dismantled. People first refused to pay, then took to the streets to protest. In the end, after police violence, the people won and the contract was terminated.

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• Prisons

The trend in the United States towards privatisation of prisons has been quite dramatic over the last decade. According to AFSCME, there are now 193 for-profit prisons in operation or under construction in 30 states, with 43 in Texas and 24 in California. Altogether they account for seven per cent of the prison population. Profits passed the US\$1 billion mark in 1998.

The two largest private prison corporations in the US are Wackenhut and Corrections Corporation of America. These corporations have already become transnationals. CCA alone manages 82 prisons with 73,000 beds in 26 states, Puerto Rico, Great Britain and Australia. Wackenhut extends its reach to South Africa and Canada.

Not only are prisons being privatised, but 36 states allow corporations to set up factory production in prisons where wages are low and workers forced to be compliant. The *New York Times* (March 19, 2000, p. 22) reports: "Private sector programs, which exist in 36 states and employ 3,500, have doubled in size since 1995 after years of almost no growth."

Recent studies report that minorities are being targeted by the judicial system: black men are sent to state prisons on drug charges at 13 times the rate of white men, even though five times as many whites use cocaine; minorities are given longer sentences and treated more harshly than whites. These three trends—private prisons, private sector production in prisons, and a judicial system which targets minorities—are creating a system tantamount to slave labour.

• Workers and Unions

GATS is likely to accelerate the use of cheaper labour abroad, facilitated by use of the Internet in providing many services. Privatisation of government services will allow for replacement of public sector unions with non-unionised workers. This loss of worker power will further accelerate the race to the bottom in wages.

There cannot be justice at home or abroad when human services are taken out of the public sector and given over to profit-driven corporations. This trend is being promoted by the overall goal of privatisation of all services through GATS. How much will be achieved in this round of negotiations remains to be seen.

Aren't Government Services Excepted?

The United States Trade Representative's office and the WTO Secretariat say not to worry. All government services are excepted under GATS Article I, section 3 (b) and (c). But is this really true? It is important to understand just what these sections say.

Section (b) says "'services' includes any service in any sector except services supplied in the exercise of governmental authority". Sounds fine, right? Read on. Section (c) says "'a service supplied in the exercise of governmental authority' means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers".

Now it just so happens that "commercial basis" is not defined in GATS. The USTR staff say they cannot provide a definition, nor can the WTO staff. Member countries would have to agree on the definition. Meanwhile, if a dispute arises over whether a government service is covered, it will be left up to the dispute settlement procedures to decide the meaning.

"Competition" is also used without any further explanation. If there is one private school in a community, does that mean there is competition and the public system is not exempted? If one community is totally public, but the next has a private school which will accept students from both communities, is there competition? Again, the USTR and WTO staff cannot provide the definition.

In sum, this exception is so full of holes that it is almost impossible to say with certainty which local, state or federal government services are covered. One thing is for sure: the police and military are exempted from GATS under the "public safety" general exception.

• Government Procurement

GATS Article XIII calls for "multilateral negotiations on government procurement in services under this Agreement within two years from the date of entry into force of the WTO agreement". Six years after GATS was signed, these negotiations are still ongoing. There is, however, a government procurement agreement under GATT which only covers goods.

What are the GATS provisions?

Some of the GATS provisions will be familiar to anyone involved in the fight against the Multilateral Agreement on Investment (MAI). Under GATS, some of these apply to all sectors, whether or not they are included in a country's schedule of commitments. Others apply only to those sectors included on the schedule.

• Most Favoured Nation Treatment

According to Article II, all WTO countries must treat services and service suppliers from any member

country no less favourably than service suppliers in any other member country. This applies to *all* services, whether or not they are on a country's list of commitments. The only exception is government procurement of services (see above). However, at the time the agreement was signed, countries were allowed to take one-time-only temporary exceptions which are now up for review.

• National Treatment

Under Article XVII, services and service suppliers of member countries must receive treatment no less favourable than that given to domestic services and service suppliers. This provision only applies to the sectors included in a country's schedule of commitments.

As with the MAI, a country could treat foreign corporations more favourably than domestic ones. Take prisons, for example. Once the US puts this sector on its schedule, it would be illegal

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under WTO rules for communities to pass an ordinance which restricts the building of private prisons to domestic corporations.

- **Transparency**

Article III requires all member countries to publish all "measures" relevant to GATS. Measures include those by "central, regional or local governments and authorities; and non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities". The full implementation of this provision is a top priority for the US, which wants to go even further and require proposed regulations to be published (see below).

Even in your local community, every law or regulation relating to services is subject to scrutiny under GATS. However, corporations are protected from the government disclosing confidential information "which would prejudice legitimate commercial interests of particular enterprises".

- **Domestic Regulation**

Article VI requires that domestic regulations "do not constitute unnecessary barriers to trade in services". The disciplines developed under this section can be used to overturn local, state or federal regulations, even if there is no discrimination based on National Treatment or Most Favoured Nation Treatment.

- **General Obligations**

Article VI could also become a vehicle for setting "general obligations" which would not be limited to country-specific commitments, a position already taken by the WTO Secretariat. This could be a major intrusion on national, state and local sovereignty.

- **More Transparency**

The US negotiators want all member countries and their political subdivisions to publish their *proposed* regulations to allow for public comment from other member countries. This could be a very significant burden on local communities, who would have to consider such comments from around the world before adopting a change to their regulations for recycling or water treatment, for instance. And who would comment? Most likely the TNCs, as they have the resources to keep track of how such proposed regulations would affect their business interests. This *unfunded mandate* is not really about democracy; it is about corporate power.

- **Necessity**

The Council for Trade in Services is given the authority to "develop any necessary disciplines" to ensure that such regulations are "not more burdensome than necessary to ensure the quality of the service" and are "based on objective and transparent criteria, such as competence and the ability to supply the service". Currently, countries are interpreting this to mean they have to demonstrate the necessity of their regulations. This potentially gives the Council much leeway to create international regulations which can trump domestic regulations.

The Working Party on Domestic Regulation, established by the Council, is looking at legitimate objectives which do not have to meet the necessity test. The European Community (EC) has submitted a paper covering "necessity", which lists proposed

legitimate objectives which has some appealing entries such as "protection of consumers", "protection of the environment", "promotion of welfare, including public policy objectives", and "ensuring pluralism and a media system based on free and democratic principles and including a public service broadcast system".

The WTO Secretariat has responded with its own list: "economic efficiency", "promoting competition", "administrative efficiency" and "economic development". If these were to be adopted, it would be a major assault on domestic environments, consumer protection and human health

regulations. Think about how this might affect health care, education, treatment of prisoners and provision of drinking water. Fortunately, the US negotiators are opposed to adopting a list of "legitimate objectives", since there is a significant risk that we will end up with the WTO's list.

- **Tribunals**

To top it off, Article VI has a domestic version of the investor-to-state provision which has caused such folly in NAFTA and was slated to be part of the MAI. GATS calls for

each country to set up its own tribunals, where service suppliers can take their grievances and expect appropriate remedies.

It is no surprise that powerful corporate lobbies like the US-based Coalition of Service Industries and the European Services Forum have put expanding the GATS domestic regulation provisions on the top of their agendas.

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• General Exceptions

Here, in Article XIV, at least measures "necessary to protect human, animal or plant life or health" are excepted from GATS altogether—except that the preamble has a caveat large enough to drive a truck through. Such measures cannot be "a disguised restriction on trade in services". It is just this language which has led the WTO tribunals to come down against environmental regulations in cases brought before them.

While Article XIV is generally parallel to Article XX of the General Agreement on Tariffs and Trade, it omits any mention of natural resources included in the GATT general exceptions. But, as we have seen in the case of water, natural resources can come under GATS. If the operation of a pipeline is a service, then is not the operation of a coal train or a lumber truck a service? By not exempting such services, could not GATS undercut the exemption contained in GATT?

• Schedules of Specific Commitments

The member countries' schedules of specific commitment were annexed to the GATS agreement at the time of its adoption. Now the pressure is on countries to "liberalise" their service sector further by increasing their commitments.

Under Article XX, if a country fails to state a limitation on national treatment or market access when their schedule is committed, they are just out of luck. This includes conditions and qualifications on national treatment for states or provinces and communities as well as for the whole country.

Conclusion: It's Time for Action

By promoting the privatisation and deregulation of all services, GATS represents a major restructuring of the global economy and a loss of sovereignty at local, state and federal levels. When Renato Ruggiero boasted "We are writing the constitution of a single global economy"—the "we" he was referring to being the trade ministers in bed with the corporations, not us.

It is essential that citizens in the US and around the world come together in a massive movement to stop further deregulation and privatisation of these services. There is much that can be done locally to build this movement. Here are a few ideas:

- Let the US Trade Representative negotiators know that you don't want water included in GATS at all. Write to US Trade Representative Charlene Barshefsky with a copy to Chris Rosetti, Director, Multilateral Services and Investment Affairs. Send your letter to : USTR, 600 17th Street, NW, Washington, DC 20508.

- Get your city/town council to pass a resolution on GATS. A model resolution will be available shortly from the Alliance. Contact Ruth Caplan in the Washington, DC, office on (202) 244 0561 or e-mail rcaplan@igc.org.

- Sign the WTO "Shrink It or Sink It" letter which calls for gutting GATS, saying "areas such as health, education, energy and other basic human services must not be subject to international free trade rules". Contact Margrete Strand at mstrand@citizen.org for a copy.

- Join Alliance for Democracy list-serves on GATS topics—education, health, water, prisons—for information and action alerts; e-mail rcaplan@igc.org. The Alliance also has Action Packets on each of these topics. These are available from the national office, 681 Main Street, Waltham, MA 02451, USA, tel 1-888 466 8233 (toll-free in North America), website www.thealliancefordemocracy.org.

- Read and discuss reports on privatisation. For starters, we recommend the following sources on these subjects:

- § Education: *The Nation*, September 27 1999;

- § Health: "The WTO and the GATS: What is at stake for public health?", Public Services International, www.world-psi.org;

- § Water: *Blue Gold* by Maude Barlow (available from IFG, tel (415) 229 9350);

- § Prisons: *Mother Jones* May/June 2000;

- Study the pattern of corporatisation of services in your community. What changes have taken place in the ownership and management of water, school, health and prison facilities? What have been proposed? Are any of the corporations headquartered outside the US?

- After you identify the hot issues in your community, hold a community forum to look at the problems from both a local and global perspective, including the added threat which further "liberalisation" under GATS poses. Select materials from the Alliance Action Packets to use as handouts.

- Join with other organisations in your community to develop a campaign around your local issues, linking them with the expansion of GATS.

Editor's Note :

For more information on GATS, check the following references (sourced from the WDM website, www.globalissues.org):

1) From the World Development Movement

- "Stop the GATSastrophe campaign": www.globalissues.org/TradeRelated/FreeTrade/GATS.asp

- "In Whose Service?", a report on GATS issues and concerns: www.oneworld.org/wdm/cambriefs/WTO/Inwhoseservice.htm

- The WTO Campaign provides articles and reports on issues related to GATS at the WTO: www.oneworld.org/wdm/campaign/WTO.htm

2) From Third World Network

- "New GATS talks threaten democracy": www.oneworld.org/wdm/campaign/WTO.htm

- "Not so foolproof GATS safeguards and prudential rights": www.twinside.org.sg/title/gats-cn.htm

- "Clear North-South divide on services negotiations": www.twinside.org.sg/title/serv-cn.htm

3) From Consumers International

- "Consumers and the Liberalisation of Services": www.consumersinternational.org/trade/trade_brief/services.html

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Under Article XX, if a country fails to state a limitation on national treatment or market access...they are just out of luck.